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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
1998 Biennial Regulatory Review–	)	MM Docket 98-35
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	

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To: The Commission

COMMENTS OF THE HEARST CORPORATION

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July 21, 1998

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SUMMARY

The issuance of the Notice of Inquiry initiating its current biennial review of multiple ownership rules presents the Commission with the first opportunity to thoroughly examine its newspaper/broadcast cross-ownership restriction since the rule's promulgation in 1975. For the reasons set forth in these Comments, The Hearst Corporation respectfully argues that the rule should be repealed.

Hearst urges the Commission to review its newspaper/broadcast cross-ownership restriction in light of the expanded level of diversity and competition in today's mass media marketplace. In 1975 the number of outlets of news and information was limited primarily to newspapers, the three broadcast networks, and AM radio. Since 1975 new technologies have created a diverse media market. Hearst submits that repeal of the cross-ownership rule would have no significant negative effect on the continued development of viewpoint or outlet diversity.

The Commission's ongoing concern in reviewing the newspaper/broadcast cross-ownership restrictions is also reflected in its interest in ensuring economic competition in the marketplace. As defined in the Commission's Notice of Inquiry, the market subject to competitive analysis is the advertising market. While the Commission suggests in its Notice that repeal of the cross-ownership rule might give a company market power to raise advertising rates, Hearst respectfully disagrees. First, television stations, radio stations and newspapers do not represent exact interchangeable substitutes for advertising formats or advertising dollars. Second, the Commission's statement does not account for the numerous other methods of advertising that have significant market share. In fact, repeal of the cross-ownership rule would result in significant economies of scale benefiting the level of industry competition among

current market participants and new entrants as they compete more vigorously to distribute better news and information services and products.

The cross-ownership rule should be repealed, not only because the media market is more diverse and competitive than ever, but also because, in today's environment, the rule is unduly burdensome on the newspaper industry and severely restricts the industry's First Amendment rights. As the communications industry has evolved, the Commission and Congress have responded by loosening many of the other multiple ownership rules. However, the newspaper industry continues to be burdened by the newspaper/broadcast cross-ownership rule which has become an anachronism in a changed world.

Hearst additionally submits that the Supreme Court's holding in Red Lion Broadcasting v. FCC is no longer a valid premise upon which to continue regulation. With a multitude of sources now providing viewpoint diversity, the scarcity rationale is no longer a viable basis for regulations. Absent a concern over scarcity, Hearst respectfully suggests that the newspaper/broadcast rule should now be analyzed under the traditional intermediate scrutiny test, under which it would fail because it is not narrowly tailored to address a substantial government interest.

As presented in these Comments, both the level of diversity and competition in the multi-media marketplace have increased so dramatically since 1975 that retaining the cross-ownership rule no longer serves the public interest. There is evidence that the rule actually hinders diversity and competition, is unduly burdensome and unconstitutional. Repeal of the newspaper/broadcast cross-ownership rule would be consistent with both the marketplace of the 1990s and the Commission's and Congress's recent treatment of other multiple ownership rules.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review– Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)))))	MM Docket 98-35

To: The Commission

COMMENTS OF THE HEARST CORPORATION

The Hearst Corporation ("Hearst"), by its attorneys, hereby submits these comments in response to the Commission's Notice of Inquiry in MM Docket 98-35, released March 13, 1998 ("Notice of Inquiry").

I. Statement of Identity and Interest

Hearst is a privately-held company with broad communications interests, including newspapers, magazines, books, business publishing (including yellow-pages directories) and broadcast.[1] These comments are also filed on behalf of Hearst Newspapers, an indirect division of Hearst, which publishes twelve daily newspapers – in both major cities and smaller markets – and seven weekly newspapers in Texas and Michigan.

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[1] Although Hearst has some holdings in radio broadcasting, its primary broadcast interest is in television, most of which properties are held by Hearst-Argyle Television, a publicly-held company, of which Hearst has a controlling interest. Hearst-Argyle is submitting separate comments in this proceeding. In addition to the interests mentioned, Hearst also has ownership interests in cable television programming services and maintains a division which produces and distributes programming, primarily TV movies, as well as syndicated children's educational series.

Although the Commission's Notice of Inquiry deals with several of the Commission's ownership restrictions, as required by the 1996 Telecommunications Act, Hearst Newspapers submits these comments in this proceeding with particular interest in review of the Commission's current newspaper/broadcast cross-ownership restrictions.[2] While Hearst has holdings in both newspapers and broadcast stations, the current restrictions prevent Hearst from owning a newspaper and a broadcast station in the same location.[3] Hearst Newspapers files as an interested party to provide the Commission with information regarding the impact of the newspaper/broadcast cross-ownership restriction on the current marketplace, to propose its elimination and to discuss the potential benefits for both diversity and competition that repeal might have.

More specifically, Hearst Newspapers files as an interested party in this proceeding to ensure that the newspaper industry's ability to compete within the communications industry is not unfairly or unnecessarily restricted. Hearst Newspapers suggests in these comments that the current restrictions on newspaper/broadcast ownership not only fail to protect diversity or competition, but also actually hinder it. As a company with interests in multiple media of communication, Hearst has significant experience in fostering efficient synergies and new concepts both within and between its operating groups. For example, Hearst recently turned its successful Popular Mechanics magazine into a successful educational television program for children. The magazine is published by Hearst Magazines; the television program is produced

[2] While Hearst Newspapers notes that the Commission has limited its request for comment to the newspaper/television restriction, its comments below apply equally to the restriction on newspaper/radio cross-ownership.

[3] 47 C.F.R. § 73.3555(d).

by Hearst Entertainment; and the program airs in many locations on Hearst-Argyle Television stations.

Hearst began its operations by publishing newspapers. Through its expansion to magazines and broadcasting, Hearst has viewed its purpose as both a provider of news and information and a source of entertainment. Although its newspapers and television holdings have functioned successfully independently, Hearst submits these comments in large part because of its belief that, if permitted to own these media in the same geographic location, Hearst could create economies of scale that would benefit the public in the form of more in-depth news and information. Hearst believes that the creation of economies of scale through cross-ownership would ultimately result in more creative, detailed, and diverse coverage of news and information.

In short, Hearst is well positioned to provide the Commission with its concepts for how elimination of the rule would positively affect the newspaper and broadcast industries, as well as the communications market as a whole.

II. <u>The Commission Has the Authority to Review and Repeal its Current Rules Regarding Newspaper/Broadcast Cross-Ownership</u>.

Prior to the 1996 Telecommunications Act, Congress had for several years restricted the Commission's authority to review, amend or relax its 1975 prohibition on newspaper/broadcast cross-ownership.[4] There were several years during the 1980s and 1990s that the Commission

[4] For several years, Congress included riders in its appropriation bills for the Departments of Commerce, Justice and State, the Judiciary and Related Agencies, which explicitly prohibited the Commission from reviewing its newspaper/broadcast cross-ownership rules. <u>See, e.g.</u>, <u>Making Appropriations for the Departments of Commerce, Justice and State, the Judiciary and Related Agencies for the Fiscal Year Ending September 31, 1992</u>, Pub. L. No. 102-140, 105 Stat. 797 (1991).

recognized the need to review its ownership rules applicable to other media. However, the agency was obligated by law to explicitly exempt the newspaper/broadcast ownership from such rulemaking proceedings.[5] In 1996, Congress lifted its past restrictions, not only permitting the Commission to review its provisions on newspaper/broadcast ownership, but also requiring such review, as part of the Commission's biennial review.[6] As stated in the Act, the Commission shall review "all of its [broadcast] ownership rules biennially. . . and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest."[7]

The language presented in the 1996 Act is consistent with and complementary to both case law and statutory law authorizing the Commission to act in support of the "public interest." As stated in the Commission's 1975 Second Report and Order imposing the cross-ownership regulation, the Commission's authority to issue such regulations is grounded in the Communications Act of 1934 – requiring the "Commission to find that the granting of a license serves the public interest, convenience and necessity."[8] The Commission also noted the Supreme

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5 See, e.g., various proceedings by the Commission referencing the appropriations riders. Notice of Inquiry at ¶ 29 n.47; Notice of Proposed Rulemaking (Review of the Commission's Regulations Governing Attribution of Broadcast Interests, Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry, Reexamination of the Commission's Cross-Interest Policy), 10 FCC Rcd 3606, 3608, n.4 (1995); Notice of Proposed Rulemaking (Review of the Commission's Regulations Governing Television Broadcasting), 7 FCC Rcd 4111 n.4 (1992).

6 Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h) (1996).

7 Id. (emphasis added); Joint Explanatory Statement of the Committee of Conference on the Telecommunications Act of 1996, 104 H. Rep. No. 458, 104th Cong. 2nd Sess. 163-4 (1996) at 163-4.

8 Second Report and Order (Amendment of Sections 73.34, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations), 50 FCC 2d 1046, 1048 (1975) (citing § 309(a) of the Communications Act of 1934, 47

Court's early definition of the public interest as encompassing many factors, including "the widest possible dissemination of information from diverse and antagonistic sources."[9] The Commission and the Court have further defined "public interest" to include diversity of ownership, sources and viewpoints.[10] In addition, Congress has provided the Commission with discretion to "issue regulations codifying its view of the public-interest licensing standard, so long as that view is based on consideration of permissible factors and is otherwise reasonable."[11]

Historically, the Commission based its broadcast ownership regulations, including the newspaper/broadcast cross-ownership restriction, on the "public interest" of fostering diversity in the broadcast industry by protecting (i.e., restricting) the use of physically scarce broadcast spectrum. Such an interest on the part of the Commission has been supported by the courts.[12] While the Commission's responsibility to act in the "public interest" is unquestioned, the interpretation of what defines the "public interest" is fluid. In the case of the Commission's newspaper/broadcast ownership restrictions, it is clear that the Commission's original basis for these regulations no longer serves the public interest.[13]

U.S.C. § 303 (r)) ("Second Report and Order"), recon., 53 FCC 2d 589 (1975), rev'd in part, National Citizens Committee for Broadcasting v. FCC, 555 F.2d 938 (D.C. Cir. 1977), reinstated, FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775 (1978) ("NCCB").

9 Id. (quoting in part Associated Press v. United States, 326 U.S. 1, 20 (1945)).

10 Notice of Inquiry at ¶ 6; NCCB, 436 U.S. at 781.

11 NCCB, 436 U.S. at 793 (citing United States v. Storer Broadcasting, 351 U.S. 192 (1956)).

12 United States v. Storer Broadcasting, 351 U.S. 192 (1956); NCCB, 436 U.S. at 775.

13 As noted in section III below, even in 1975, the idea of fostering diversity by limiting spectrum use was primarily predictive.

Since 1975, the dynamics of the mass communications industry and technology have evolved so dramatically as to render largely irrelevant the spectrum scarcity argument and to place in question the relevance of the restrictions imposed by the newspaper/broadcast cross-ownership ban, in particular. In fact, the post-1975 revolution within the media industry has made the restrictions counterproductive to modern communications and marketing. As Congress recognized by including its biennial review language in the 1996 Act, the Commission's continuing obligation to protect the public interest requires the agency to review its ownership rules in light of the new competitive sources of news and information in the marketplace.[14]

III. Historical Review of the Basis for the 1975 Rulemaking that Instituted the Newspaper/Broadcast Cross-Ownership Ban.

Although the issue of restricting cross-ownership between the broadcast and newspaper industries was reviewed periodically from the 1940s until 1975, most interested parties did not question that the newspaper industry's involvement and ownership in both radio and television was instrumental in the development and success of those technologies.[15] Thus, until the 1970s, the Commission found that the cross-ownership relationship created economies of scale favorable to the growth of broadcasting that did not contravene the public interest. The consideration of whether to restrict newspaper/broadcast ownership in the early 1970s was the

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[14] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h) (1996).

[15] Even when creating the new ownership restrictions, the Commission acknowledged the role of the newspaper industry in the growth of the broadcast industry. Second Report and Order, 50 FCC 2d at 1064-65, 1074-75. "There can be no doubt that newspapers brought a pioneering spirit to broadcasting. . . ." Id. at 1074; see also NCCB, 436 U.S. at 781. As one of the oldest companies involved in both industries, Hearst in fact was instrumental in the birth of both radio and television. Prior to 1920, Hearst was primarily a newspaper and magazine company. However, during the 1920s the company began producing movie newsreels and purchasing radio stations. In 1948, Hearst purchased one of the first television stations in the country, WBAL-TV, Baltimore.

culmination of an effort on the part of the Commission to regulate the broadcast industry. During the 1960s, the Commission promulgated restrictions on local cross-ownership, duopoly, chain broadcasting and national broadcast ownership.[16] All of these regulations were based on concerns over the growth of new technologies and the involvement of large media companies and their effects on the Commission's increasing interest in "diversity."[17]

In the 1975 order instituting the new newspaper/broadcast cross-ownership restriction, the Commission based its restriction on the Commission's "twin goals" of ensuring diversity of viewpoints and economic competition.[18] However, the Commission also stated that as between the two goals, the former was more important:

> As to competition in particular, the national public policy (expressed in antitrust laws and elsewhere) in favor of competition and against actions which would curtail it, finds a reflection in the actions of the Commission. Sometimes, this policy will yield, however, to the even higher goals of diversity and the delivery of quality broadcasting service to the American people.[19]

In deciding that a cross-ownership restriction should be imposed, the Commission did not act on evidence that newspaper ownership in the broadcast industry had in fact harmed either the

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[16] Second Report and Order, 50 FCC 2d at 1075; Richard T. Kaplar, The Media Institute, Cross-Ownership at the Crossroads, The Case for Repealing the FCC's Newspaper/Broadcast Cross-Ownership Ban 1 (1997) ("Media Institute"); Lorna H. Veraldi, Carpooling on the Information Superhighway: The Case for Newspaper-Television Cross-Ownership, 8 St. Thomas L. Rev. 349, 354 (1996).

[17] See, e.g., Second Report and Order, 50 FCC 2d at 1049-50; Media Institute at 1-2; Veraldi 8 St. Thomas L. Rev. at 354-55.

[18] Second Report and Order, 50 FCC 2d at 1074.

[19] Id. The Commission also stated that in reviewing the multiple ownership issues, "we have analyzed the basic media ownership questions in terms of this agency's primary concern -- diversity in ownership as a means of enhancing diversity in programming service to the public -- rather than in terms of a strictly antitrust approach." Id. at 1078-79.

competitive nature or diversity of the market, but rather concluded that the benefits of newspaper ownership were no longer necessary and that the restriction could promote competition and diversity.[20] The Commission noted that "even a small gain in diversity justified the new cross-ownership rule."[21] In reviewing the validity of the new rule, the Supreme Court noted in NCCB that ". . . the Commission did not find that existing co-located newspaper/broadcast combinations had not served the public interest, or that such combinations necessarily 'spea[k] with one voice' or are harmful to competition."[22] Further, the Court noted the Commission's view that the studies presented during the comment period of the rulemaking proceeding were conflicting, inconclusive in result and showed no pattern of abuses in the existing cross-owned situations.[23] Thus, the Commission reached its decision to restrict newspaper/broadcast cross-ownership not on factual evidence that the combinations reduced diversity or decreased competition, but rather on a prospective concern that with limited channel capacity available for new licensing, diversity and competition might be best fostered by restricting a local newspaper's access to these limited broadcast licenses.[24]

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20 Id. at 1074-75; see also Media Institute at 3-4; Veraldi, 8 St. Thomas L. Rev. at 361 (noting that the Commission's rulemaking was not based on any empirical showing of harm; merely on prospective concerns regarding diversity).

21 Second Report and Order, 50 FCC 2d at 1080 n.30.

22 NCCB, 436 U.S. at 786 (citing Second Report and Order, 50 FCC 2d at 1085, 1089).

23 Id. (citing Second Report and Order, 50 FCC 2d at 1072-73).

24 Indeed, it was in part because the evidence of harm was lacking that the rules were to be considered mostly prospective. The Commission did require divestiture in 16 markets where only one station and one newspaper existed and were owned by the same party; the rest of the existing cross-owned relationships were grandfathered. Second Report and Order, 50 FCC 2d at 1078. Today, approximately 21 of those television/newspaper grandfathered situations remain.

Hearst urges the Commission to review these policies in light of changing technologies and today's competitive forces. Indeed, as the Commission stated in its 1975 order, "[t]he Commission is obliged to give recognition to the changes which have taken place and see to it that its rules adequately reflect the situation as it is, not was."[25] In the 1996 Telecommunications Act, Congress also noted that the Commission is obliged to review the public interest in its ownership rules in light of the new competitive market.[26] As was the case in the 1970s, the Commission is again faced with a changing marketplace, full of new and emerging technologies that are profoundly beneficial to both the diversity and economic competitiveness of the communications market generally. It is with this historical background and analysis in mind that Hearst urges that the 1975 rule prohibiting newspaper/broadcast cross-ownership is no longer in the public interest.

IV. The Growth of New Technologies Since 1975 has Created a Diverse Media Market.

As noted above, the Commission in 1975 analyzed the diversity of the communications industry as an integral part of its rationale for the newspaper/broadcast cross-ownership rules. In 1998, diversity remains an essential concern. In the Notice of Inquiry, the Commission defines its diversity analysis as focusing on the "ability of the broadcast and non-broadcast media to advance three types of diversity (i.e., viewpoint, outlet and source)."[27]

25 Second Report and Order, at 1074-75.

26 Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h).

27 Notice of Inquiry at ¶ 6. See ¶ 6 for the definitions of viewpoint, outlet and source diversity.

A. <u>The Number of Both Broadcast and Non-Broadcast Media Has Grown Substantially</u>.

Since 1975, the number of outlets in both the broadcast and non-broadcast media has grown substantially, increasing viewpoint, outlet and source diversity to unparalleled levels. Whereas the number of outlets for news and information both locally and nationally was limited in 1975 primarily to newspapers, television, radio and magazines, a number of additional media outlets have witnessed significant growth since that time.[28] These include cable television, direct broadcast satellite, wireless cable, weekly newspapers, and the Internet. Some of the impressive statistical information regarding the penetration of each of these media is outlined briefly below:

<u>Cable Television</u>

Cable television has had the most impact on increasing all types of diversity – viewpoint, outlet and source. With regard to outlet diversity, the cable industry's significant market growth likely had the greatest impact in providing consumers (and advertisers as well) with additional outlets. In 1962, there were only 800 cable systems, with a total of 850,000 subscribers. During the 1970s, cable subscriptions increased to nearly 15 million households. By the end of 1996, there were 64 million household subscribers (six out of ten). Seventy-nine percent of cable systems offer access to at least 30 channels; and the average cable subscriber has access to more than 40 channels.[29]

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28 <u>See</u> <u>Further Notice of Proposed Rulemaking (Amendments of Sections 73.34, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM and Television Broadcast Stations)</u>, 22 FCC 2d 339, 344 (1970). The Commission noted in this notice that the public relied primarily on newspaper and broadcast stations for news and information.

29 <u>Media Institute</u> at 22-23; <u>Broadcasting & Cable Yearbook 1997</u> at D-78; <u>Cable Industry Overview and History</u> (visited July 17, 1998) <http://www.ncta.com/history.html>.

In direct relationship to the cable industry's successful market penetration is the increased number of cable networks and programmers – significantly increasing both viewpoint and source diversity. With regard to the diversity of news and information programs in particular, there is no doubt that the introduction of cable networks such as CNN, MSNBC, C-SPAN, CNBC and FoxNews, supplemented by successful regional cable news outlets and others, provides viewers with dramatically increased access to news, information and commentary. Many of these networks have attained substantial viewership since their inception.[30] The growth of cable also has provided local communities with additional sources of local news and information through public, educational and government (PEG) channels which typically serve exclusively local issues.

DBS

Nonexistent in 1970, the direct broadcast satellite (DBS) industry has grown at an impressive rate since its introduction in 1994. There are now four DBS companies in the United

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30 For example, in its year of introduction, 1996, MSNBC initially reached 22 million homes. As of May 1998, it now reaches 41 million homes. Jane Hall, Company Town MSNBC Goes on the Air and Over the Web Media, Los Angeles Times, July 16, 1996, at D6. C-SPAN was formed in 1979, reaching 3.5 million households. Today it reaches 70 million via 6,500 cable systems. Milestones in C-Span History (visited July 17, 1998) <http://www.c-span.org/about/milestones>. From a diversity standpoint, the Commission's interest is primarily in diversity of news and information, not diversity of entertainment programming -- although just the sheer increase in the number of channels available demonstrates diversity in this area as well. Further Notice of Proposed Rule Making (Review of the Commission's Regulations Governing Television Broadcasting, Television Satellite Stations Review of Policy and Rules), 10 FCC Rcd 3524, 3553 n.93 (1995) ("Further Notice"). "When [the Commission] talk[s] about diversity, we generally are referring to diversity in the presentation of news and public affairs programming." Id. Should the Commission decide to consider the diversity of entertainment programming, it is essential to also consider the meteoric growth of VCRs during the 1980s.

States. Together these companies provide multiple channels of programming to 7.2 million subscribers nationwide (only 1.7 million households subscribed to DBS in 1995).[31]

Wireless Cable (MMDS) & Satellite Master Antenna Television Systems (SMATV)

Since 1975, both MMDS and SMATV have entered the video programming marketplace. Between 1993 and 1997, these two technologies have increased their subscriber base from a total of 1.4 million to 2.2 million.[32]

Weekly Newspapers

Since 1975 there has been significant growth in the circulation of weekly newspapers within the United States. For example, in 1975, the total circulation of weekly newspapers was 35,892,409. In 1997, the total circulation had doubled to 70,434,300.[33] These publications increase the diversity and number of sources for news and information and for many of these publications their main focus is in the provision of local news and information. This is particularly significant in light of the Commission's special concern and interest in diversity not only at the national level but also at the local level.[34]

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31 Media Institute at 23. Echostar alone saw a subscriber increase of 330% in one year between 1996 and 1997. Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, 13 FCC Rcd 1034, 1194 (1998) ("Fourth Annual Report").

32 Fourth Annual Report, 13 FCC Rcd at 1199-1201.

33 Newspaper Association of America, Facts About Newspapers 1998, A Statistical Summary of the Newspaper Industry 31 (1998) ("Facts About Newspapers").

34 In addition to diversity benefits, the growth of weekly newspapers provides another competitive outlet for advertisers.

The Internet

Among video programming technology, cable has certainly made the most impressive penetration. However, more recently the Internet has begun to rival cable TV in the degree with which it has penetrated the communications industry as the new "information highway." While able to offer entertainment, the Internet's most important societal contribution has been to provide another source for news and information. This includes local news and information. Many communities – rural and urban, small and large – have established web sites providing vital information to their residents. In addition, many networks, local newspapers and television stations have established web sites providing up-to-date news and information affecting their communities.

The speed with which the Internet's penetration has occurred is phenomenal. As the Newspaper Association of America ("NAA") indicated in its April 1997 Petition for Rulemaking to the Commission, Integrated Services Digital Network ("ISDN"), a provider of high-speed Internet connections, had 450,000 lines operating by December, 1995.[35] As of June 30, 1998, 24.4 million households have access to the Internet.[36]

In addition to the growth of the above mentioned media, both the newspaper and broadcast industries continue to compete in this diverse environment. Since the 1970s, the broadcast industry has seen noteworthy growth in the number of networks and overall licensed broadcast stations. In 1986, Fox Television launched its network and now airs some of the most

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35 Petition for Rulemaking (Amendment of Section 73.3555 of the Commission's Rules to Eliminate Restrictions on Newspaper/Broadcast Station Cross-Ownership), Newspaper Association of America 31 (1997) ("NAA Petition for Rulemaking").

36 Statistics from Arlen Communications, Inc. This figure is 4% higher than in March, 1998 and represents a 14% increase from twelve months ago. Id.

popular programs on television. More recently, United/Paramount Network and the Warner Brothers Network are taking their places as the fifth and sixth networks and Paxson Broadcasting is creating a seventh. In addition, there are now 1,211 commercial television stations, 559 VHF and 652 UHF.[37] This is an increase from 690 stations in 1970, 508 VHF and 182 UHF.[38] Meanwhile, the newspaper industry remains the medium that reaches more adults than any other.[39]

Finally, the radio industry has seen remarkable growth since 1975. In 1975, there were 7,785 licensed, on-air radio broadcast stations.[40] In 1998, there are 12,227 licensed, on-air radio broadcast stations.[41] Since enactment of the 1996 Act, 226 new licenses have been granted.[42] The growth in the number of stations is matched by comparable growth in the variety of formats available to radio audiences.[43]

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37 See Broadcast Station Totals as of May 31, 1998, News Release (released June 19, 1998).

38 See Syndication and Financial Interest Rules, Tentative Decision, FCC 83-377, 54 Rad. Reg. 2d (P&F) 457 (1983) at ¶ 108.

39 Newspaper Readership Holds Steady While TV, Cable Viewership Erodes (visited June 29, 1998) <http://www.naa.org/about/cmi/index.html>. 58.7% of adults read papers; 42.4% of adults watch prime-time TV; 35.4% of adults listen to morning drive radio; and 10.4% of adults watch primetime cable TV. Id. In addition, newspaper circulation among the morning editions has grown significantly since 1975 from 25.5 million to 45.4 million. Facts About Newspapers at 16.

40 Broadcasting & Cable Yearbook 1998 at D-702. Of these stations, 4,432 were AM stations; 3,353 FM.

41 Id. The growth in FM is particularly strong, more than doubling from 3,300 to 7,465.

42 Id.

43 Broadcasting & Cable Yearbook 1982 at D-77-D-98. In 1982, 15 format options were reported. In 1998, there are approximately 90-95 such formats. This statistic is particularly informative given the growth of consolidation within radio since the 1996 Act. These statistics lend credence to the argument that consolidation does not necessarily have a negative effect on

In addition to the traditional sources of information and newer technologies already in the market, there are additional new entrants – such as digital TV, digital cable, LMDS, and digital audio radio (DARS). Indeed, with the growing number of delivery technologies, even more products and sources for information are inevitable.

B. In Light of the Growth Outlined Above, Repeal of the Cross-Ownership Rule Would Have No Significant Effect on Market Diversity.

The Commission seeks specific comment on the effect of the reduction of separately owned outlets on diversity.[44] While the Commission defines source diversity as including an ownership component, it is but one part of a much broader overall analysis. While repeal of the cross-ownership rule certainly might affect the number of owners, it does not necessarily have a negative effect on source, viewpoint or outlet diversity as a whole and indeed might even have positive effects on diversity.[45] First, the explosion of new media voices since 1975, as outlined above, means there are a significantly greater number of "voices" in the market such that repeal of the cross-ownership rule would have little or no adverse effect on the availability of diverse viewpoints and outlets. Second, as outlined in more detail below, the economies of scale benefits resulting from cross-ownership could improve the ability of newspapers and broadcasters to provide more in-depth reporting to the public. For example, in this competitive and diverse marketplace, it is increasingly desirable for both newspapers and broadcasters to look for additional methods of disseminating their news and information products. However, the

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diversity and may, in fact, have a positive effect. Broadcasting Cable Yearbook 1998 at D-631, 632; see also NAA Petition for Rulemaking at 19.

44 Notice of Inquiry at ¶ 40.

45 Media Institute at 16-17.

development and marketing of these new products which rely on new technology such as the Internet, is costly; pooling resources of cross-owned media would relieve this burden.[46]

The Commission also seeks additional comment on "whether and to what extent, newspapers and broadcast stations under common ownership express contrasting points of view or cover each other in a critical manner."[47] As stated in section I above, Hearst is involved in both media. Hearst's newspaper and broadcast holdings are run out of separate operating groups, managed by individual Group Heads. In addition, each broadcast station and newspaper has its own operations. While none of Hearst's holdings is co-located, as with grandfathered combinations, it is Hearst's policy that each newspaper and broadcast station present its own editorial viewpoint. Many of the economies of scale that result from cross-ownership are administrative or resource driven and are independent of editorial or content decisions. Thus, cross-ownership will not necessarily translate into common editorial positions or reduction in the presentation of conflicting points of view on issues of public concern.

Moreover, even if the Commission's concern in 1975 regarding spectrum scarcity and potential lack of diversity in the marketplace was valid at that time, there is sufficient empirical evidence in 1998 that the public has ample sources from which to gather news and information (as well as from which to be entertained) to relieve the Commission of any doubt that diversity is strong in the media marketplace.

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46 Veraldi, 8 St. Thomas L. Rev. at 367. See also Media Institute at 17-18.

47 Notice of Inquiry at ¶ 40.

V. <u>With the Number of New Sources for Advertising Available, the Media Market of 1998 is Increasingly Competitive and Would Remain So with the Elimination of the Cross-Ownership Rule</u>.

While the issue of ensuring content diversity in the mass media market was the Commission's primary concern in instituting the newspaper/broadcast cross-ownership restrictions, the Commission stated a second concern: ensuring economic competition in the marketplace.[48]

In its present Notice of Inquiry and in previous rulemaking proceedings, the Commission has defined the "market" for economic competitive analysis. Specifically, the Commission has defined three economic markets in which broadcasters operate: the market for delivered video programming, the program production market and the advertising market.[49] However, for the purpose of analyzing cross-ownership between the broadcast and newspaper industries, the Commission has indicated that the only applicable market of those three is the local advertising market.[50]

Hearst concurs with the earlier analysis of the Newspaper Association of America that the competition for advertising dollars among the three media – newspapers, television and radio –

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48 Second Report and Order, 50 FCC 2d at 1074. See generally, NCCB, 436 U.S. 775 (1978) (confirming primary importance is diversity). In reviewing the issue of economic competition, in 1975 the Commission found at best conflicting evidence of competitive harm from existing cross-ownership relationships and instituted the ban as premised instead on a desire to foster diversity. See discussion supra section IV. While economic competition is a concern to the Commission, Hearst notes that the Department of Justice and Federal Trade Commission, of course, also have separate jurisdictions to protect against anti-competitive behavior.

49 Notice of Inquiry at ¶ 5; Further Notice, 10 FCC Rcd at 3535; see also Roger D. Blair, An Economic Analysis of the Cross-Ownership of WDZL and the Sun Sentinel at 9 (1996) (appendix to Tribune filing).

50 Id.; Notice of Inquiry at ¶ 5, ¶¶ 35-36.

and particularly between newspapers and the two broadcast media – is not as simple as the Commission has previously suggested.[51]

Based on data for 1997, the newspaper industry's total advertising expenditures accounted for 22.1%. Broadcast television and broadcast radio accounted for 19.9% and 7.1%, respectively. However, these figures do not indicate, as the Commission suggests in its Notice of Inquiry, that "permitting the owner of a broadcast television or radio station to own a newspaper, or vice versa, could give the company market power to raise. . . . advertising rates. . . ."[52] This conclusion is incorrect because it assumes that television stations, radio stations and newspapers represent exact interchangeable substitutes for the advertising formats and advertising dollars. While it may be true that these three media compete for some advertising dollars, it is also demonstrably true that each provides advertisers unique reasons for buying advertising space or time on that particular medium. Additionally, there are demographic, aesthetic and sensory reasons why an advertiser chooses to advertise on one medium over another.

When analyzing the overall advertising figures and market share, it is also essential to recognize that the most significant form of advertising in newspapers is a format not subject to substitution on over-the-air television or radio: classified advertising. Hearst Newspapers' experience with regard to its local advertising revenue mirrors that of the industry as a whole. Currently, classified advertising represents nearly 40% of the total advertising dollars spent both for Hearst Newspapers and for the average U.S. daily newspaper.[53] Indeed, if one removes the

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51 NAA Petition For Rulemaking at 35-37; see also Notice of Inquiry (Newspaper/Radio Cross-Ownership Waiver Policy), 11 FCC Rcd 13003, 13014 (1997); Notice of Inquiry at ¶ 36.

52 Notice of Inquiry at ¶ 36.

53 Miles F. Groves, Newspaper Association of America, The Economy's Still Hot, But Caution Still Rules 4.

portion of advertising expenditures for classifieds from total market percentage share figures, newspapers account for 13.1% of the total advertising expenditures against television's 19.9% and radio's 7.1%.

Finally, in addition to newspapers, radio and TV, there are other methods of advertising that have significant market share. Most significant are the percentage share of advertising expenses spent on direct mail and "miscellaneous" advertising. Direct mail advertising in 1997 represented 19.8% of the total advertising dollars expended; and 16.9% of the total advertising dollars were expended in miscellaneous forms of advertising – which include weeklies, shoppers, pennysavers, and bus and cinema advertising.[54] The remainder of advertising expenditure dollars are currently divided between magazines, cable, billboards and yellow pages.[55]

The local advertising market is increasingly robust and more competitive in 1998 than ever before. There is significant evidence that, because of the differences between the media and the number of sources available to advertisers, any new cross-owned relationships spurred by elimination of the current rule would likely have no significant effect on competition in the advertising market.

VI. Elimination of the Newspaper/Broadcast Cross-Ownership Rule Would Result in Significant Economies of Scale Benefiting Both the Level of Competition in the Industry and the General Public.

In the context of other Commission multiple ownership restrictions, the Commission has acknowledged the economic efficiencies and benefits inherent when one entity owns both radio and television stations. Similar benefits to economic competition and to the public interest result

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54 Facts About Newspapers at 13.

55 Id.

from newspaper/broadcast cross-ownership. Co-ownership could, for example, result in additional programming, specialty or in-depth programming and additional services in the public's best interest. It would also allow a broadcast station to utilize a large newspaper's considerable news-gathering resources and reporting personnel, sharing, for example, meteorologists, financial experts, local sports personalities and trouble shooter reporters, allowing both to provide more well-rounded service to the community.[56] Access to these reporters' expertise would lend credibility and depth to their news coverage, providing for greater competition among media in the delivery of news and information and encourage national bureaus to better localize national stories.

More specifically, co-ownership could provide communities with continuing, in-depth coverage of civic emergencies. For example, because co-owned local newspapers and broadcast stations would likely have increased access to reporters and improved meteorological equipment, they could provide localities with more up-to-the-minute reporting of extreme weather events, like snow storms, tornadoes, or hurricanes. In addition, improved economies of scale would allow for more complete broadcast coverage of significant local events, such as community forums, farm reports, and other programs dealing with local needs, which may be cost prohibitive for a stand-alone station.[57] This would allow individuals in more remote communities to keep abreast of local issues when they otherwise may not have access to such information.

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[56] See, e.g., United Radio Group, Inc., 7 FCC Rcd 2207, 2208 (1992), Shareholders of Citicasters, Inc., 11 FCC Rcd 19135, 19139 (1996), Golden West Broadcasters, 10 FCC Rcd 2081, 2082 (1995), Great American Television and Radio Co., 4 FCC Rcd 6347, 6349 (1990).

[57] See, e.g., Great American Television and Radio Co., 4 FCC Rcd at 6349, Scripps Howard Broadcasting, Inc., 8 FCC Rcd at 8012.